



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PABLO E. MELENDEZ,

Plaintiff,

-against-

C.H.S. CORRECTIONAL HEALTH
SERVICES, et al.,

Defendants.

21-CV-09163 (GHW) (BCM)

ORDER OF SERVICE

Barbara Moses, United States Magistrate Judge:

Plaintiff, currently incarcerated in the West Facility on Rikers Island, brings this *pro se* action under 42 U.S.C. § 1983 and the Americans With Disabilities Act against "C.H.S. Correctional Health Services" (CHS) and various individuals, alleging among other things that he has been deprived of adequate health care. By order dated November 5, 2021, the Court granted plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis* (IFP). On November 8, 2021, Judge Woods directed the Clerk of Court to fill out a U.S. Marshals Service Process Receipt and Return form (USM-285 form) for defendant CHS, issue a summons, and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon that defendant. Judge Woods also granted plaintiff leave to amend his complaint to detail his claims against the individual defendants he sought to hold liable. (Dkt. No. 6.)

On December 28, 2021, plaintiff filed an Amended Complaint against CHS, the City of New York, Correctional Officer (CO) Guity, and Deputy Warden Jane Doe. (Dkt. No. 11.)

On February 28, 2022, a Process Receipt and Return was filed reporting that the process server was "unable to locate" CHS for service at 125 Worth Street, New York, NY 10013. (Dkt. No. 12.)

A. Order of Service on Correctional Health Services

Because plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service. *Walker v. Schult*, 717 F.3d. 119, 123 n.6 (2d Cir. 2013);

see also 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve all process . . . in [IFP] cases."); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP). Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that the summons and complaint be served within 90 days of the date the complaint is filed, plaintiff is proceeding IFP and could not have served the summons and complaint until the Court reviewed the complaint and ordered that a summons be issued. Moreover, it appears that the initial attempt to service CHS was made at an incorrect address. The Court therefore extends the time to serve until 90 days after the date the summons is issued. If the complaint is not served within that time, plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff's responsibility to request an extension of time for service); *see also Murray v. Pataki*, 378 F. App'x 50, 52 (2d Cir. 2010) ("As long as the [plaintiff proceeding IFP] provides the information necessary to identify the defendant, the Marshals' failure to effect service automatically constitutes 'good cause' for an extension of time within the meaning of Rule 4(m).").

To allow plaintiff to effect service on defendant CHS through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form ("USM-285 form") for CHS. The Clerk of Court is further instructed to issue an amended summons and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect adequate service upon CHS.

B. Waiver of Service as to Officer Guity

The Clerk of Court is directed to notify the New York City Department of Correction (DOC) and the New York City Law Department (Law Department) of this Order. The Court requests that Officer Guity waive service of summons.

C. Deputy Warden Jane Doe

Under *Valentin v. Dinkins*, a *pro se* litigant is entitled to assistance from the district court in identifying a defendant. 121 F.3d 72, 76 (2d Cir. 1997). In the complaint, plaintiff supplies information that should be sufficient to permit the DOC and the Law Department to identify Deputy Warden Jane Doe. *See* Am. Compl. at 4 (alleging that Deputy Warden Doe assaulted him on January 28, 2021, in the N.I.C. intake area, during a videotaped extraction). It is therefore ordered that the DOC and the Law Department, which is the attorney for and agent of the DOC, must ascertain the identity and badge number of this Jane Doe defendant, whom plaintiff seeks to sue here, and the address where this defendant may be served. The Law Department must provide this information to plaintiff and the Court within sixty days of the date of this order.

Within thirty days of receiving this information, plaintiff must file a second amended complaint naming the Jane Doe defendant. The second amended complaint will replace, not supplement, the current complaint. A form that plaintiff may use for this purpose is attached to this order. Once plaintiff has filed a second amended complaint, the Court will screen the second amended complaint and, if appropriate, request that Deputy Warden Jane Doe waive service of summons.

D. Conclusion

The Clerk of Court is directed to mail a copy of this order to plaintiff, together with an information package. An amended complaint form is attached to this order. Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if plaintiff fails to do so.

The Clerk of Court is further instructed to issue an amended summons for CHS, complete the USM-285 form with the address shown below for this defendant, and deliver all documents necessary to effect service on CHS to the U.S. Marshals Service.

The Clerk of Court is directed to mail a copy of this order and the complaint to the New York City Law Department at: 100 Church Street, New York, NY 10007.

Dated: March 23, 2022
New York, New York

SO ORDERED.

A handwritten signature in blue ink, appearing to read "Barbara Moses", is written over a horizontal line.

BARBARA MOSES
United States Magistrate Judge

DEFENDANT AND SERVICE ADDRESS

- C.H.S. Correctional Health Services - CHS Warehouse, 49-04 19th Ave., Astoria, NY 11105

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Write the full name of each plaintiff.

-against-

Write the full name of each defendant. If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section IV.

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(Include case number if one has been assigned)

**SECOND AMENDED
COMPLAINT**
(Prisoner)

Do you want a jury trial?

☐ Yes ☐ No

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

I. LEGAL BASIS FOR CLAIM

State below the federal legal basis for your claim, if known. This form is designed primarily for prisoners challenging the constitutionality of their conditions of confinement; those claims are often brought under 42 U.S.C. § 1983 (against state, county, or municipal defendants) or in a “*Bivens*” action (against federal defendants).

☐ Violation of my federal constitutional rights

☐ Other: _____

II. PLAINTIFF INFORMATION

Each plaintiff must provide the following information. Attach additional pages if necessary.

First Name	Middle Initial	Last Name
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State any other names (or different forms of your name) you have ever used, including any name you have used in previously filing a lawsuit.

Prisoner ID # (if you have previously been in another agency’s custody, please specify each agency and the ID number (such as your DIN or NYSID) under which you were held)

Current Place of Detention

Institutional Address

County, City	State	Zip Code
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III. PRISONER STATUS

Indicate below whether you are a prisoner or other confined person:

☐ Pretrial detainee

☐ Civilly committed detainee

☐ Immigration detainee

☐ Convicted and sentenced prisoner

☐ Other: _____

IV. DEFENDANT INFORMATION

To the best of your ability, provide the following information for each defendant. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are identical to those listed in the caption. Attach additional pages as necessary.

Defendant 1:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 2:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 3:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 4:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

V. STATEMENT OF CLAIM

Place(s) of occurrence: _____

Date(s) of occurrence: _____

FACTS:

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and how each defendant was personally involved in the alleged wrongful actions. Attach additional pages as necessary.

This image shows a single sheet of white paper with horizontal blue ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

INJURIES:

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

VI. RELIEF

State briefly what money damages or other relief you want the court to order.

VII. PLAINTIFF'S CERTIFICATION AND WARNINGS

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I understand that if I file three or more cases while I am a prisoner that are dismissed as frivolous, malicious, or for failure to state a claim, I may be denied *in forma pauperis* status in future cases.

I also understand that prisoners must exhaust administrative procedures before filing an action in federal court about prison conditions, 42 U.S.C. § 1997e(a), and that my case may be dismissed if I have not exhausted administrative remedies as required.

I agree to provide the Clerk's Office with any changes to my address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

Dated

Plaintiff's Signature

First Name

Middle Initial

Last Name

Prison Address

County, City

State

Zip Code

Date on which I am delivering this complaint to prison authorities for mailing: _____